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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 379 (PKC)

5 GEOVANNY FUENTES RAMIREZ,

6 Defendant.

7 -----x

8 New York, N.Y.

9 March 12, 2021

9:52 a.m.

Before:

10 HON. P. KEVIN CASTEL,

11 District Judge

12 And A Jury

13 APPEARANCES

14 AUDREY STRAUSS,

United States Attorney for the

15 Southern District of New York

MICHAEL LOCKARD

16 JACOB GUTWILLIG

Assistant United States Attorneys

17 AVRAHAM CHAIM MOSKOWITZ

18 EYLAN SCHULMAN

Attorneys for Defendant

19 ALSO PRESENT:

20 JILL HOSKINS, Spanish Interpreter

21 GABRIEL MITRE, Spanish Interpreter

MIRTA HESS, Spanish Interpreter

22 MERCEDES AVALOS, USAO Spanish Interpreter

WALTER KROCHTAL, USAO Spanish Interpreter

23 BRIAN FAIRBANKS, DEA Agent

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(In open court; jury not present)

THE COURT: So, this is the situation: At 7:16 a.m., there was a message left on chambers' voicemail that Juror No. 8's husband works at a school in Westchester and "does film," and that a student in the school tested positive for COVID-19, and that she and her husband were heading to a testing site, and that it would take approximately two hours to get results. At approximately 9:00 a.m., she confirmed that she was at the testing site and -- did she say whether she had been tested yet? No, she had not been tested as of 9:00 a.m.

This is my plan of action:

Number one, I have alerted the COVID response team of the Southern District of New York, who are in direct contact with our consultant, and will get their advice from our consultant, and I have proposed to them that what I would do is either question the juror by phone, if I have a chance to do that -- I do not know whether she's going to come right down or not, but if I get a chance to question her by phone, find out what her husband does, did her husband practice social distancing and masking, and find out, assuming it's a negative test result, what does she know about the kind of test she had. It may be the fact that it's a two-hour turnaround, that it's a clue that it's not the fast swipe test, which would be more concerning, so that's a clue that it's not that, it's the more thorough testing. And then I propose to tell our jurors that

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1 one of our jurors has been delayed for a good reason, and that
2 when I know more, I'll let them know, but just wanted to let
3 them know that there may be an extended delay this morning.

4 That's my proposed plan of action. I'm perfectly
5 happy to hear views of either side, if they have anything they
6 wish to say.

7 Is there anything from the government?

8 MR. LOCKARD: No, your Honor.

9 THE COURT: Anything from the defendant?

10 MR. MOSKOWITZ: No, your Honor. That's acceptable.

11 THE COURT: Okay. So, I think what I'll do is call up
12 our jurors.

13 Now, the first order of business is that I'm going to
14 hear from the district's COVID response team, number one,
15 whether this is a plausible scenario, if this is the right way.
16 I've been in touch with them many, many times over the months,
17 in other capacities that I have with the court, so when I come
18 up with this, it didn't come out of thin air, it came based on
19 what I understand they would advise. I just want to run it by
20 them, see if they're onboard, and then if they say something
21 different, then we'll deal with it.

22 But I'm not inclined to excuse the juror because of
23 the delay involved. We have three alternates left; I don't
24 want to lose any more alternates if I don't have to.

25 So, Madam Deputy, if you could arrange for the jury to

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1 be brought up.

2 MR. LOCKARD: Your Honor, there is one other matter
3 that the government does want to raise this morning. It can
4 wait until after --

5 THE COURT: No, go ahead.

6 MR. LOCKARD: So, we learned this morning that the
7 audio testimony from yesterday was recorded and has been posted
8 to the internet in various forms --

9 THE COURT: Was recorded?

10 MR. LOCKARD: Yes, your Honor.

11 -- I believe on YouTube and also social media, is what
12 we've been advised. So, number one, we wanted to alert the
13 Court to that fact.

14 And then, number two, as the Court knows, there are
15 two witnesses that have orders relating to the nature of their
16 testimony, and, in light of the recording and posting of
17 testimony and the nature of those two witnesses, we'd ask the
18 Court to consider not doing the dial-in during those two
19 witnesses' testimony.

20 THE COURT: Local Civil Rule 1.8 provides: Unless
21 authorized to do so by an administrative order of each
22 respective court, meaning this court and the Eastern District
23 of New York, no one other than court officials engaged in the
24 conduct of court business shall: (a) bring any camera,
25 transmitter, receiver, recording device, cellular telephone,

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1 computer or other electronic device into any courthouse; or.

2 (b) make an audio or video recording of any proceeding
3 or any communication with the court, an employee of the court
4 or any person acting at the direction of the court, including a
5 mediator.

6 So, an audio recording of a proceeding is a violation
7 of Local Civil Rule 1.8 because there is no administrative
8 order of this Court permitting it. It is a violation of law.

9 In addition, I command and order compliance with Local
10 Civil Rule 1.8. A violation of Rule 1.8 and my order is
11 punishable by contempt of court. It may also, under certain
12 circumstances, be deemed the crime of obstruction of justice,
13 depending on the state of mind of the person engaging in the
14 conduct. This is a serious matter. And that's where I stand
15 right now.

16 Are our jurors ready?

17 THE DEPUTY CLERK: Yes.

18 THE COURT: Come on in. Bring in our jurors.

19 Remain seated, sir.

20 (Continued on next page)

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(Jury present)

THE COURT: Good morning, ladies and gentlemen.

JUROR: Good morning.

THE COURT: I just wanted to give you an update.

We received a call this morning from one of our jurors – obviously, from the empty seat, it's Juror No. 8 – indicating a very good reason that she will be delayed in coming in this morning; in fact, I wholeheartedly agree that it's appropriate.

So, I'm awaiting further word, further callback, from her, and when I know more, you'll know more. I didn't want to withhold any information from you, so I'm telling you, and I expect that we'll be able to proceed as usual. We're obviously assembled, we're ready to go. That's my expectation and hope, but I will do what is appropriate under the circumstances.

That's all I have. All right? So, I'll let you know when we know more. All right? You may return to the jury room.

Thank you, ladies and gentlemen, and I'm sorry that this circumstance exists, but it does. We're all subject to the vagaries of being human, and I know that you all have burdens in your individual lives. Being on trial doesn't mean that you don't have family members to check up on, laundry to do, cooking to do, bills to be paid, annoying or not so annoying emails from your employers that have to be responded to. I realize this, I know this. It's not like I think that

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1 you've been sitting around all your lives with nothing to do
2 until you got called for jury duty; you've got busy lives.

3 So, I am committed to bringing this trial to a fair
4 and appropriately paced conclusion, which, in my view, means
5 moving it along. So, that's where we are. And you may return
6 to the jury room.

7 Thank you.

8 (Continued on next page)

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(Jury not present)

THE COURT: Let's get back to the matter at hand.

If you want to, on some break or by the end of the day, get to me law on the subject – and the same way with Mr. Moskowitz – if want to get me law, it probably doesn't have to be by the end of the day but it will have to be by Sunday so I have it for the beginning of court on Monday, I'll look at it.

The other thing that I would certainly say is, if the government, with its resources, has a lesser remedy, i.e., some sort of voice scrambling, I'd listen to that, but in light of the Constitution's promise of a speedy and public trial, cutting off public access on a phone line is not my first choice.

Now, I will quickly add, what's different – what is different – is this is a public courthouse that is open to the public, and, in this public courthouse, we have spectators right now in this courtroom and we also have an overflow courtroom. So, this is fundamentally different. I do not read my copy of the Constitution to say that in addition to a speedy and public trial at the courthouse, the Court must broadcast the proceedings over an AT&T conference line. So, that's my preliminary view on it.

There is no request, as I see it, at the moment, to close the courtroom or shut down the overflow courtroom; it's

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1 simply this added feature that does not exist in ordinary
2 times. In ordinary times, the public would love to be able to
3 sit home and listen to a court proceeding. Why not? There
4 used to be Court TV with cameras in the courtroom, but there's
5 no constitutional requirement that there be a Court TV. And I
6 don't see a constitutional requirement that there be an AT&T
7 call-in line, provided this courtroom remains open and to
8 accommodate those who because of social distancing can't fit
9 in, that they can go to courtroom 11D on the 11th floor of 500
10 Pearl Street and listen to the proceedings.

11 So, that's maybe to give you further enlightenment on
12 the subject.

13 And I will be handing out at some point today, this
14 morning I hope, a copy of the proposed jury instructions. It
15 will not be a shock to anyone that I tried USA v. Hernandez, a
16 trial, in October 2019, and that has been the starting point in
17 my development of jury instructions for this case.

18 So, we are adjourned until I know more. All right?
19 Thank you.

20 (Recess)

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(In open court; jurors not present)

THE COURT: Remain seated, please.

Here's where I am. The juror's still awaiting test results. My instincts are, since we don't know what the test results are and there's still a needed conversation with the counsel to the district executive who will let me know whether it's advisable to allow the juror to sit or not, has some questions above and beyond did you test positive or negative, like what kind of test, and what was your husband told, and some circumstances, I think the wise thing to do is to let our jurors go home and pick up on Monday. Today was going to be a short day. Let's not torture them only to not have the trial go forward.

Any objection?

MR. LOCKARD: No, your Honor.

MR. MOSKOWITZ: No, your Honor.

THE COURT: All right. Second question is this: I will be working on this during the day, and I might even be working on this over the weekend.

One second, please.

The question is if, in consultation with the district executive and his counsel, the recommendation to me is that the juror be excused, is there any objection to my doing so, and the flip side of that, if their recommendation is that the juror need not be excused, that I not excuse her? Any

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objection from the government?

MR. LOCKARD: No, your Honor.

MR. MOSKOWITZ: No, your Honor.

THE COURT: All right. So that will not necessitate
my further consulting with either side on that issue.

You can bring our jurors in, please.

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1 (Jury present)

2 THE COURT: One moment, ladies and gentlemen.

3 Ladies and gentlemen, the situation with your fellow
4 juror is still unfolding. In the best of circumstances, she
5 would not be able to get here for another 20 minutes or so. It
6 would probably be a little bit longer than that because there
7 are other things beforehand. So my judgment is not to make you
8 wait any longer and just call it a day. Remember, today was
9 going to be a short day. We were only going to go until 3:30.
10 So that's what I think is best rather than having you sit
11 around for another maybe hour or so and then end with a short
12 day anyhow. So that's my best judgment on this and that's what
13 I propose to do.

14 Now let me get to a very important subject: lunch.
15 You're going to be free to go, come back 9:30 on Monday
16 morning. If you want to wait another 15 minutes, Flo ordered
17 the lunch for 12:00. Whether it arrives there at 12:00, I
18 don't know, but you can wait around until the lunch gets there
19 and take a lunch with you. Not a bad idea if you like the
20 food. If you want to leave, that's OK too. So that's going to
21 be up to you all to make individual decisions on, whether you
22 want to stay for the lunch to arrive or not.

23 I know it's not as warm as it had been, but I hope
24 it's still a good day. And what I need to tell you on a Friday
25 is remember the instructions. You don't talk about the case.

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1 I understand that you'd possibly like to talk about the case.
2 Remember what I said about a little bit of mystery in your
3 life? Now you're getting the hang of it: You know, sorry,
4 under judge's orders. Don't want to go to jail. Can't talk to
5 you until the trial is over. I'll tell you all about it then.
6 And they're going to say: But, but, can you at least tell me
7 this? No. You have to wait. So that's number one.

8 Number two, keep an open mind. You haven't heard the
9 case. You haven't heard the witnesses. You haven't heard the
10 completion of cross-examination or any such thing. So just be
11 patient, wait till the case is over before you make up your
12 mind, and then only in consultation with your fellow jurors.

13 The other thing is it's useful to remind you, you
14 don't read anything about the case. You don't go searching for
15 information about the case or the terms or the lawyers or the
16 witnesses or anything about the case. You wouldn't want that
17 if one of your loved ones was involved in a trial like this or
18 you were in involved in a trial like this. You would want
19 jurors who understood why it's fair to let things come out in
20 the courtroom and let both sides address it. Isn't that the
21 essence of being fair? And that's what you want to do. So
22 don't go off on your own doing research. That's not allowed.
23 No texting, no blogging, no emailing about the case, of course.

24 OK. So enough of the don'ts. Do relax. Do get your
25 chores done. Do find some free time. Do remember that we're

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1 moving the clocks ahead. You're losing an hour. What is it?
2 Fall back, spring forward, isn't that what we all learn?
3 That's what we're going to do, spring forward. Don't forget to
4 change the clock because you've got to be here for a 9:30 sharp
5 start, and then we'll get moving.

6 If there's no objection, we could go next week maybe
7 to 5 o'clock rather than 4:30 if that -- if you don't mind. My
8 experience is jurors would rather -- they realize it's tough
9 duty being on a jury, but they'd rather get it over in fewer
10 days, not shorter days but fewer days. So I will consider
11 doing that next week, staying until 5:00, but if somebody has a
12 problem with that, you'll let me know in a note.

13 So with that, enjoy the weekend. It's daylight saving
14 time, ladies and gentlemen. Springtime is ahead. We're
15 adjourned.

16 (Jury excused)

17 (Continued on next page)

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1 (Jury not present)

2 THE COURT: All right. I'm having my clerk hand out
3 what will be marked as the next court exhibit, which is a draft
4 of the jury instructions. Since you have all this free time on
5 your hands today, I'm going to ask that you get me a letter by
6 the close of business on Monday with any comments you have on
7 the draft instructions. When I say "close of business," let's
8 make that 7 p.m. on Monday. If you have any comments on the
9 jury instructions, if you've read ahead to the instructions in
10 the prior case, then there won't be too many surprises here.

11 And one other thing. I'm going to ask the government
12 to send to the Court and to Mr. Moskowitz the link to this
13 YouTube that you referred to.

14 MR. LOCKARD: Yes, your Honor.

15 THE COURT: I will say, for the record, that I and,
16 independently, my staff tried searching for it. We couldn't
17 find it. Doesn't mean it's not there, but we didn't find it.

18 MR. LOCKARD: I think our press office was alerted by
19 one of their contacts, so I'll be able to send it to the Court
20 and the parties.

21 THE COURT: Good. Excellent, excellent.

22 MR. MOSKOWITZ: Your Honor, if I -- would it be
23 possible for chambers to send us an electronic copy of the
24 charge?

25 THE COURT: Yes, we'll do that.

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1 MR. MOSKOWITZ: Thanks.

2 THE COURT: We'll do that.

3 All right. With that, and as long as our jurors have
4 cleared out -- we don't have anyone there to double-check on
5 that, but I'll just have my clerk take a quick, quick look. If
6 the jurors have cleared out, you're welcome to leave.

7 THE LAW CLERK: Still a few more, Judge.

8 THE COURT: That's fine.

9 OK. Thank you all very much.

10 (Adjourned to March 15, 2021, at 9:30 a.m.)
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